

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 07/16/12

DEPT. 50

HONORABLE JOHN L. SEGAL

JUDGE

I. FLORES

DEPUTY CLERK

HONORABLE
7

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

E. AVENA, C/A

Deputy Sheriff

A. GONZALEZ, CSR #11612
Court Pro Tempore

Reporter

8:31 am BC422252

WILLIAM TAYLOR (X)
VS
CITY OF BURBANK

RECUSAL-GREEN
170.6-ROLF M. TREU

Plaintiff CHRIS BRIZZOLARA (X)
Counsel DOUGLAS G. BENEDON (X)

Defendant LINDA MILLER SAVITT (X)
Counsel RONALD F. FRANK (X)
ROBERT J. TYSON (X)

NATURE OF PROCEEDINGS:

MOTION OF PLAINTIFF WILLIAM TAYLOR FOR ATTORNEY'S FEES;

MOTION OF THE ABOVE NAMED PLAINTIFF FOR EXPERT WITNESS COSTS;

Motions as captioned above, are called for hearing and held.

The Stipulation and Order to Use Certified Shorthand Reporter having been signed by the Court and filed this date, the case proceeds with the reporter of record as reflected on the minute order.

The court issues a written tentative ruling in this matter. The court hears from counsel re Motion for Attorneys' Fees.

The matter is placed on second call, to hear from counsel re Motion for Expert Witness Fees.

LATER, AND OFF THE RECORD:

The matter is recalled. For this proceeding only the following attorneys are present:

For plaintiffs: Chris Brizzolara (X)
For defendants: Ronald F. Frank (x) and Robert J. Tyson (X)

CITY ATTORNEY
2012 JUL 20 PM 3:38

2/14

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

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Plaintiff

CHRIS BRIZZOLARA (X)

Counsel

DOUGLAS G. BENEDON (X)

WILLIAM TAYLOR (X)

VS

Defendant

LINDA MILLER SAVITT (X)

CITY OF BURBANK

Counsel

RONALD F. FRANK (X)

RECUSAL-GREEN

ROBERT J. TYSON (X)

170.6-ROLF M. TREU

NATURE OF PROCEEDINGS:

The court hears from counsel re: Motion for Expert Witness Fees.

After hearing from counsel, the Court takes the above captioned motions, under submission.

Notice is waived.

LATER, OFF THE RECORD AND OUTSIDE THE PRESENCE OF ALL COUNSEL:

The Court rules on above captioned submitted motions as follows:

For all of the reasons stated in the Court's Rulings on Submitted Matters filed this date under separate cover, the Court rules as follows:

PLAINTIFF'S MOTION FOR ATTORNEYS' FEES:

For these reasons, the court will award plaintiff his reasonable attorneys' fees in the amount of \$820,610.60.

PLAINTIFF'S MOTION FOR EXPERT WITNESS FEES:

Plaintiff's motion to recover expert fees under Government Code Section 12965(b) is GRANTED in part. Plaintiff may recover \$22,925 in expert witness fees.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

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A. GONZALEZ, CSR #11612
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Reporter

8:31 am

BC422252

Plaintiff

CHRIS BRIZZOLARA (X)

Counsel

DOUGLAS G. BENEDON (X)

WILLIAM TAYLOR (X)

VS

Defendant

LINDA MILLER SAVITT (X)

CITY OF BURBANK

Counsel

RONALD F. FRANK (X)

RECUSAL-GREEN

ROBERT J. TYSON (X)

170.6-ROLF M. TREU

NATURE OF PROCEEDINGS:

Accordingly, the amount of costs, attorneys' fees and expert witness fees are entered into the Judgment on General Verdict filed on April 12, 2012.

The clerk is directed to give notice. A conformed copy of the court's Rulings on Submitted Matters and copy of the Judgment on General Verdict filed on April 12, 2012, are sent along with a copy of this minute order.

CLERK'S CERTIFICATE OF MAILING

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the minute order dated: 7/16/12; conformed copy of court's Rulings on Submitted Matters and a copy of Judgment on General Verdict filed on April 12, 2012, upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Los Angeles, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Dated: 7/17/12

John A. Clarke, Executive Officer/Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 07/16/12

DEPT. 50

HONORABLE JOHN L. SEGAL

JUDGE

I. FLORES

DEPUTY CLERK

HONORABLE
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JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

E. AVENA, C/A

Deputy Sheriff

A. GONZALEZ, CSR #11612
Court Pro Tempore

Reporter

8:31 am

BC422252

Plaintiff

CHRIS BRIZZOLARA (X)

Counsel

DOUGLAS G. BENEDON (X)

WILLIAM TAYLOR (X)

VS

Defendant

LINDA MILLER SAVITT (X)

CITY OF BURBANK

Counsel

RONALD F. FRANK (X)


RECUSAL-GREEN

ROBERT J. TYSON (X)

170.6-ROLF M. TREU

NATURE OF PROCEEDINGS:

By:


I. Flores, Deputy Clerk

GREGORY W. SMITH
LAW OFFICES OF GREGORY W. SMITH
9100 Wilshire Boulevard, Suite 345E
Beverly Hills, CA 90212

CHRISTOPHER BRIZZOLARA
1528 16th Street
Santa Monica, CA 90404

LINDA MILLER SAVITT
BALLARD ROSENBERG GOLPER & SAVITT, LLP
500 North Brand Boulevard, 20th Floor
Glendale, CA 91203

RONALD F. FRANK
ROBERT J. TYSON
BURKE, WILLIAMS & SORENSSEN, LLP
444 S. Flower Street, 24th Floor
Los Angeles, CA 90071

CAROL A. HUMISTON

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 07/16/12

DEPT. 50

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BC422252

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Counsel

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VS

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CITY OF BURBANK

Counsel

RONALD F. FRANK (X)

RECUSAL-GREEN

ROBERT J. TYSON (X)

170.6-ROLF M. TREU

NATURE OF PROCEEDINGS:

CITY OF BURBANK
275 East Olive Avenue
P.O. Box, 6459
Burbank, CA 91510

CITY ATTORNEY

2012 JUL 20 PM 3:55

RULINGS ON SUBMITTED MATTERS

JULY 16, 2012

TAYLOR v. CITY OF BURBANK, ET AL.
CASE NO. BC422252

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

JUL 16 2012

John A. Clarke, Executive Officer/Clerk
BY I. FLORES

PLAINTIFF'S MOTION FOR ATTORNEYS' FEES

A. Entitlement to Attorneys' Fees

A prevailing FEHA plaintiff may recover his or her reasonable attorneys' fees. Plaintiff prevailed on his FEHA claim and is entitled to recover his reasonable attorneys' fees.

B. The Amount of Reasonable Attorneys' Fees

1. Calculation of the Lodestar

The court determines the amount of reasonable attorneys' fees under the FEHA pursuant to the lodestar method. Chavez v. City of Los Angeles, 47 Cal. 4th 970, 985 (2010); see PLCM Group, Inc. v. Drexler, 22 Cal. 4th 1084, 1095-96 (2000); Serrano v. Priest, 20 Cal. 3d 25, 48 (1977); Thayer v. Wells Fargo Bank, N.A., 92 Cal. App. 4th 819, 833 (2001); Meister v. Regents of the University of California, 67 Cal. App. 4th 437, 446-47 (1998). The lodestar method has "primacy" in California. Lealao v. Beneficial California, Inc., 82 Cal. App. 4th 19, 26 (2000). "In determining a reasonable fee award under fee shifting statutes, the trial court begins by calculating a lodestar figure based on the hours reasonably spent, multiplied by the prevailing hourly rate for private attorneys in the community conducting litigation of the same type." Rey v. Madera Unified School District, 203 Cal. App. 4th 1223, 1240 (2012). Under the lodestar method, the trial court has discretion to determine that time spent on issues and claims on which plaintiff does not prevail is time not "reasonably spent." Boquilon v. Beckwith, 49 Cal. App. 4th 1697, 1722-23 (1996). "There is no precise rule or formula for making these determinations. The trial court may attempt to identify specific hours that should be eliminated, or it may simply reduce the award to account for the limited success. The court necessarily has discretion in making this equitable judgment." Sokolow v. County of San Mateo, 213 Cal. App. 3d 231, 248 (1989) (citing Hensley v. Eckerhart, 461 U.S. 424, 436-37 (1983)). "Once the lodestar is fixed, the court may increase or decrease that amount by applying a positive or negative 'multiplier' to take other factors into account." Rey, 203 Cal. App. 4th at 1240; see PLCM Group, 22 Cal. 4th at 1095; Thayer, 92 Cal. App. 4th at 833.

2. Reasonable Hourly Rate

"To enable the trial court to determine whether attorney fees should be awarded and in what amount, an attorney should present . . . expert opinion, by [the applicant] and other lawyers, as to what would be a reasonable fee for such services." Martino v. Denevi, 182 Cal. App. 3d 553, 558 (1986). But such evidence is not required.

"Testimony or other direct evidence of the reasonable value of the services need not be introduced, the knowledge and experience of the trial judge being sufficient." Nazemi v. Tseng, 5 Cal. App. 4th 1633, 1642 (1992); see Donahue v. Donahue, 182 Cal. App. 4th 259, 276 (2010) ("judges themselves are deemed to be experts on the value of legal services, and may rely on their own experience about reasonable and proper fees, without resort to expert testimony").

Here, the hourly rates requested by counsel for plaintiff are \$600 for Gregory Smith, \$600 for Christopher Brizzolara, and \$525 for appellate counsel Douglas Benedon. The court finds that in light of these attorneys' backgrounds and experience, the hourly rate for Mr. Smith and Mr. Brizzolara is a little high. The court finds that \$550 is a reasonable hourly rate for Mr. Smith and Mr. Brizzolara. The \$525 hourly rate for Mr. Benedon is reasonable.

3. Hours Reasonably Expended

"Where fees are authorized by statute, the amount of the fee to be awarded is to be determined by the trial court in the reasonable exercise of its discretion. (Contractors Labor Pool, Inc. v. Westway Contractors, Inc. (1997) 53 Cal. App. 4th 152, 169.) The trial court, which possesses its own expertise on the value of legal services performed, makes its determination after consideration of a number of factors, including the nature of the litigation, its difficulty, the amount involved, the skill required in its handling, the skill employed, the attention given, the success or failure, and other circumstances in the case." Thompson Pacific Constr., Inc. v. City of Sunnyvale, 155 Cal. App. 4th 525, 557 (2007) (citation omitted).

The court has reviewed in detail the invoices submitted by counsel for plaintiff. See Declarations of Gregory Smith, Christopher Brizzolara, and Douglas Benedon. For Mr. Smith's time, the court will award the following:

DATE	HOURS
06/13/09	3.0
06/15/09	0.9
06/17/09	2.2
06/30/09	0.8

07/30/09	2.7
08/25/09	3.8
09/18/09	3.5
09/21/09	0.4
10/12/09	0.4
10/13/09	1.0
10/16/09	3.6
10/20/09	0.6
10/26/09	3.2
11/02/09	0.3 ¹
11/11/09	6.5
11/13/09	1.0
11/16/09	0.2
11/25/09	4.0
12/14/09	0.5
01/15/10	3.0
01/18/10	0.1
09/19/10	9.0
01/29/10	0.2
02/24/10	0.5
03/02/10	4.0 ²
03/05/10	0.5

¹ The answer is only six pages. It cannot have taken Mr. Smith an hour (!) to read it. It took Mr. Brizzolara only 0.1 hours to read the same answer. See Brizzolara Decl., Exh. A, at 1 (11/07/09 entry).

² The court notes that virtually every court hearing at which Mr. Smith appears required 4.0 hours of his time, regardless of the nature or actual length of the hearing.

03/11/10	0.2
03/31/10	1.0
04/05/10	1.3
04/14/10	4.0 ³
04/16/10	4.2
04/21/10	0.5
04/27/10	0.5 ⁴
04/28/10	0.5
05/04/10	0.5
05/07/10	7.0
06/04/10	0.5
07/06/10	4.5
07/07/10	5.0
07/12/10	7.5
08/11/10	4.0
08/13/10	3.5
08/30/10	3.0
08/31/10	0.1
09/03/10	0.5
09/21/10	0.3
09/22/10	4.0
10/10/10	0.3
10/20/10	2.5

³ The court cannot understand how Mr. Smith drafted both the motion and the reply to the same motion on the same day.

⁴ The court notes that almost every letter Mr. Smith wrote took 0.5 hours to draft, apparently regardless of the length of the letter.

10/21/10	1.7
11/02/10	2.2
11/04/10	4.0
11/05/10	6.0
11/06/10	4.0
12/05/10	3.0
12/20/10	0.2
12/23/10	0.2
01/10/11	3.5
01/13/11	0.2
01/14/11	0.2 ⁵
01/19/11	4.0
01/21/11	4.0
02/11/11	1.0
03/18/11	2.0
03/23/11	4.1
04/06/11	4.0
04/19/11	0.5
05/31/11	4.0
06/01/11	0.3
06/28/11	0.7
07/05/11	4.0
07/07/11	5.6
07/08/11	0.3

⁵ The answer to the first amended complaint is only six and a half pages, and is strikingly similar to the answer to the original complaint. It cannot have taken Mr. Smith two hours (!!) to read it.

08/08/11	0.5
08/19/11	4.0
08/26/11	2.8
09/01/11	3.5
09/09/11	0.5
09/15/11	4.1
09/16/11	3.8 ⁶
10/03/11	11.0
10/04/11	7.4
10/05/11	4.5
10/06/11	4.2
10/07/10	8.5
10/11/11	2.5
10/12/11	9.0
10/13/11	9.0
10/17/11	2.5
10/18/11	9.0
10/26/11	3.5
10/27/11	2.5
10/28/11	2.5
10/31/11	3.7
11/01/11	6.5
11/02/11	4.1
11/04/11	3.4
11/07/11	0.4

⁶ This letter took 0.8 hours of Mr. Smith's time, but was addressed to two recipients.

11/07/11	5.0
11/10/11	7.1
11/15/11	4.6
11/16/11	4.5
12/07/11	8.4
01/12/12	5.4
01/13/12	4.3
01/16/12	5.0
01/17/12	5.5
01/18/12	3.0
01/19/12	6.5
01/20/12	7.3
01/30/12	3.5
01/31/12	1.5
02/14/12	6.4
02/21/12	9.5
02/22/12	3.2
02/24/12	9.8
02/26/12	3.2
02/27/12	7.2
02/28/12	1.0
02/29/12	6.5
03/01/12	6.9
03/02/12	8.7
03/03/12	9.6
03/04/12	8.4
03/05/12	13.1

03/06/12	9.5
03/07/12	12.6
03/08/12	13.1
03/09/12	8.1
03/12/12	13.5
03/13/12	12.8
03/14/12	12.9
03/15/12	9.3
03/16/12	9.2
03/19/12	8.4
03/29/12	0.5
04/05/12	1.5
04/12/12	0.5
04/26/12	2.5
04/27/12	3.7
05/07/12	4.5
05/17/12	2.2
05/18/12	1.5
05/22/12	3.2
05/30/12	1.0
06/01/12	2.0
06/06/12	4.1
06/10/12	3.5
Total	589.6

At Mr. Smith's reasonable hourly rate of \$550, the total amount of Mr. Smith's reasonable attorneys' fees is **\$324,280**.

For Mr. Brizzolara's time, the court will award the following:

DATE	HOURS
10/12/09	0.5
10/14/09	1.2
11/12/09	1.5
02/14/10	1.5
03/01/10	7.5
03/02/10	10.1
03/03/10	8.6
03/04/10	8.6
03/25/10	1.1
04/05/10	0.9
04/21/10	0.4
04/26/10	0.6
06/02/10	0.4
06/09/10	5.6
06/21/10	1.3
07/12/10	3.8
07/13/10	6.9
07/14/10	3.3
07/24/10	0.8
07/28/10	3.6
08/10/10	1.8
08/21/10	4.4
08/22/10	8.8
08/23/10	6.3
08/24/10	6.1

08/25/10	1.1
08/27/10	2.9
08/29/10	1.7
09/02/10	0.8
09/07/10	1.1
10/03/10	6.1
10/14/10	2.6
10/25/10	4.6
10/29/10	4.1
11/11/10	0.3
12/03/10	1.5
12/06/10	4.3
12/13/10	3.4
12/15/10	3.4
12/21/10	0.4
01/09/11	2.1
01/11/11	0.3
02/19/11	1.2
05/06/11	2.0
05/23/11	2.4
06/09/11	0.3
06/24/11	6.4
06/26/11	3.2
06/29/11	3.1
07/07/11	1.3
08/04/11	1.3
08/17/11	0.8

08/26/11	1.3
10/04/11	1.6
10/05/11	0.3
10/07/11	0.2
10/10/11	5.2
10/11/11	4.8
10/12/11	4.6
10/13/11	4.4
10/17/11	3.4
10/19/11	0.5
10/20/11	5.6
10/21/11	12.5
10/22/11	0.5
10/26/11	1.1
11/09/11	0.4
11/10/11	0.6
11/16/11	1.1
12/07/11	2.1
12/10/11	3.2
12/20/11	3.2
12/21/11	5.5
01/04/12	1.5
01/09/12	3.5
02/10/12	1.3
02/13/12	10.0
02/14/12	10.9
02/15/12	2.2

02/21/12	3.3
02/28/12	9.1
03/03/12	5.2
03/04/12	10.3
03/05/12	8.3
03/06/12	8.3
03/07/12	8.2
03/08/12	11.5
03/09/12	8.1
03/10/12	2.3
03/11/12	3.6
03/12/12	10.8
03/13/12	11.0
03/14/12	14.6
03/15/12	8.2
03/21/12	0.1
04/05/12	0.3
04/17/12	0.1
05/04/12	0.1
05/12/12	7.4
05/13/12	3.4 ⁷
05/15/12	9.9
05/16/12	9.5
05/22/12	3.9
06/06/12	5.6

⁷ There appear to be missing time entries for this day on Mr. Brizzolara's time sheets.

06/10/12	2.4
Total	415.3

At Mr. Brizzolara's reasonable hourly rate of \$550, the total amount of Mr. Brizzolara's reasonable attorneys' fees is **\$228,415**.

Much of the time requested for Selma Francia appears to be for secretarial work, not paralegal work. Ms. Francia spent much of her time in this case taking dictation, proofreading letters from Mr. Smith, serving documents by mail, giving instructions to attorney service companies, and formatting and mailing letters. These are not the kind of tasks that are reasonably recoverable as attorneys' or paralegal fees from the other side. In fact, the court is surprised that plaintiff seeks to recover fees for much of Ms. Francia's time. A reasonable hourly rate for Ms. Francia is \$100.

For Ms. Francia's time, the court will award the following:

DATE	HOURS
11/02/09	0.8
11/13/09	2.0
11/16/09	0.4
12/14/09	1.2
12/17/09	0.2
12/18/09	0.6
01/13/10	0.2
01/28/10	0.2
02/16/10	0.3
02/24/10	1.0
03/09/10	0.2
03/10/10	0.2
04/02/10	0.2
04/07/10	0.5

04/12/10	0.5
04/21/10	0.8
04/22/10	0.3
05/03/10	0.2
06/16/10	1.2
08/09/10	0.3
09/17/10	0.4
09/18/10	0.3
09/24/10	0.2
10/29/10	0.5
12/21/10	0.4
03/02/11	0.3
04/06/11	0.5
04/18/11	1.2
04/22/11	0.4
05/31/11	0.2
06/01/11	0.7
06/09/11	0.2
09/13/11	0.5
09/19/11	0.2
09/28/11	1.0
09/29/11	0.3
10/03/11	0.4
10/10/11	0.5
10/14/11	0.2
10/17/11	0.5
10/19/11	1.2

10/24/11	0.5
10/28/11	0.4
11/09/11	0.2
11/10/11	0.7
12/13/11	0.6
12/20/11	1.5
01/04/12	0.5
01/05/12	0.2
02/08/12	1.8
02/09/12	0.8
02/20/12	0.2
02/22/12	2.2
02/23/12	5.6
02/28/12	1.0
03/02/12	5.5
03/05/12	4.3
03/20/12	0.3
04/26/12	7.5
06/08/12	1.0
Total	56.2

At Ms. Francia's reasonable hourly rate of \$100, the total amount of Ms. Francia's reasonable paralegal fees is **\$5,620**.

For Mr. Benedon's time, the court will award 118 hours. The court has deducted the 0.5 hours on 01/20/11 for "consults with Brizzolara and G. Smith re: writ." The initial consultation, including whether appellate counsel is going to take the case, should be without charge. At Mr. Benedon's reasonable hourly rate of \$525, the total amount of Mr. Benedon's reasonable attorneys' fees is **\$61,950**.

The total reasonable attorneys' fees under the lodestar is **\$620,265**.

4. Apportionment

Both of plaintiff's causes of action arose out of the same set of facts. The time spent by counsel for plaintiff pursuing the first cause of action for retaliation under Labor Code section 1102.5 and second causes of action for retaliation in violation of the FEHA is "inextricably intertwined." See Cruz v. Ayromloo, 155 Cal. App. 4th 1270, 1277 (2007); Erickson v. R.E.M. Concepts, Inc., 126 Cal. App. 4th 1073, 1083 (2005). "Attorney's fees need not be apportioned when incurred for representation on an issue common to both a cause of action in which fees are proper and one in which they are not allowed." Sumner Hill Homeowners' Ass'n v. Rio Mesa Holdings, LLC, 205 Cal. App. 4th 999, 1035-26 (2012). Nor need attorneys' fees be apportioned "between distinct causes of action where plaintiff's various claims involve a common core of facts or are based on related legal theories." Sumner Hill, 205 Cal. App. 4th at 1036; see Bell v. Vista Unified School Dist., 82 Cal. App. 4th 672, 687 (2000) ("Apportionment is not required when the claims for relief are so intertwined that it would be impracticable, if not impossible, to separate the attorney's time into compensable and noncompensable units"); Akins v. Enterprise Rent-A-Car, 79 Cal. App. 4th 1127, 1133 (2000) ("The joinder of causes of action should not dilute the right to attorneys' fees. Such fees need not be apportioned when incurred for representation of an issue common to both a cause of action for which fees are permitted and one for which they are not When liability issues are so interrelated that it would have been impossible to separate them into claims for which attorney fees are properly awarded and claims for which they are not, then allocation is not required."); Abdallah v. United Savings Bank, 43 Cal. App. 4th 1101, 1111 (1996) (where the plaintiff's claims are "inextricably intertwined," making it "impracticable, if not impossible to separate the multitude of conjoined activities into compensable or noncompensable time units," apportionment is not required); Drouin v. Fleetwood Enterprises, 163 Cal. App. 3d 486, 493 (1985) ("Attorneys fees need not be apportioned between distinct causes of action where plaintiff's various claims involve a common core of facts or are based on related legal theories.").

There is not much of a difference between plaintiff's two causes of action. Plaintiff's section 1102.5 cause of action was based on the allegation that defendants retaliated against him by demoting and denying him promotions because he (1) advised the Chief of Police to suspend an employee pending an investigation into allegations that the employee had sexually harassed women at the Burbank Animal Shelter; (2) complained that a captain was singling out and recommending termination of African-American and Hispanic probationary officers because of their race; and (3) recommended to the Chief of Police that the department retain an outside agency to investigate the theft of evidence relating to an internal affairs investigation, which could only have been perpetrated by an employee of the department. See First Amended Complaint, ¶¶ 14, 17, 19. Plaintiff based his retaliation cause of action under the FEHA on two of the three complaints on which the section 1102.5 cause of action is based, adding that he was fired after he filed a claim for unlawful retaliation under the FEHA.

Id., ¶ 25.

Moreover, with the exception of drafting a few jury instructions for the Labor Code section 1102.5 claim, and perhaps a little accompanying legal research, it is difficult to conceive of how plaintiff could have spent any significant time in connection with the first cause of action did not also involve the second cause of action. The court does not believe that much of a reduction for apportionment is appropriate in this case.

Counsel for plaintiff represent, somewhat self-contradictorily, that they "have specifically attempted not to submit billing for the time spent, if any, solely related to the Labor Code Section 1102.5 claim." Reply, 9:7-8. Nevertheless, to account for the occasional jury instruction and legal research that may have been limited to section 1102.5, plaintiff proposes a 2% apportionment to account for any "pure section 1102.5 time" that may have slipped through. Although this percentage probably overstates the amount of time that can fairly be attributed exclusively to the section 1102.5 cause of action, the court will apply it as a conservative estimate. This reduces the total reasonable attorneys' fees under the lodestar to **\$607,859.70**.

C. Multiplier

"There is no hard-and-fast rule limiting the factors that may justify an exercise of judicial discretion to increase or decrease a lodestar calculation." Thayer, 92 Cal. App. 4th at 834. Among the relevant factors that the trial court may consider are (1) the novelty and difficulty of the questions involved; (2) the skill displayed in presenting them; (3) the extent to which the nature of the litigation precluded other employment by the attorneys; (4) the contingent nature of the fee award, both from the point of view of eventual victory on the merits and the point of view of establishing eligibility for an award; and (5) where applicable, the fact that an award against a governmental entity would ultimately fall on taxpayers. Rey, 203 Cal. App. 4th at 1240; Thayer, 92 Cal. App. 4th at 834.

Considering these factors, the court finds that they weigh in favor of applying a multiplier of greater than one. The questions involved were moderately difficult, although not as complex as plaintiff maintains or as counsel for plaintiff made it seem at trial. Trial counsel for both sides displayed considerable skill in presenting the issues. Counsel for plaintiff showed skill in presenting the case, although counsel probably made the case much more complex than it needed to be. And there was considerable risk in the contingent nature of the case. But the fee award will be against a governmental entity. For these reasons, the court will a multiplier of 1.35. The court finds that this multiplier will adequately compensate counsel for plaintiff for the risk and complexity of taking on and prosecuting this action. Although this litigation lasted many years and included several interlocutory trips to the Court of Appeal, it appears to the court, from a review of the file and observation of the trial, that counsel for plaintiff are responsible for some of extended length and unnecessary complication in this litigation, and that the requested multiplier of 2.0 is excessive.

Applying this multiplier to the lodestar amount of reasonable attorneys' fees of **\$607,859.70**, the total award of reasonable attorneys' fees is **\$820,610.60**.

D. Disposition

For these reasons, the court will award plaintiff his reasonable attorneys' fees in the amount of **\$820,610.60**.

PLAINTIFF'S MOTION FOR EXPERT WITNESS FEES

I. Introduction

Because plaintiff obtained a net monetary recovery, he is the prevailing party and is entitled to recover his costs as a matter of right. See Civ. Proc. Code § 1032(b). Plaintiff has already recovered his ordinary statutory costs.

Under the FEHA, the court has discretion to award to a prevailing party on a FEHA cause of action, his or her "reasonable attorney's fees and costs, including expert witness fees." Gov't Code § 12965(b); see Baker v. Mulholland Sec. and Patrol, Inc., 204 Cal. App. 4th 776, 782 (2012) ("FEHA permits recovery of expert witness fees, within a court's discretion"); Anthony v. City of Los Angeles, 166 Cal. App. 4th 1011, 1017 (2008) ("FEHA now expressly authorizes the award of expert fees"). Plaintiff seeks to recover \$29,615 in expert fees.

II. Discussion

Expert fees that are recoverable by statute but require the court to exercise its discretion are recoverable by noticed motion, in the same manner by which attorneys' fees may be recovered. Anthony, 166 Cal. App. 4th at 1016. The court may award to the prevailing party its "reasonable attorneys fees and costs, including expert witness fees" Gov't Code § 12965(b); see Civ. Proc. Code § 1033.5(b)(1) ("Fees of experts not ordered by the court" are "not allowable as costs, except when expressly authorized by law"). Thus, as with all allowable costs, the prevailing party may only recover those costs that are "incurred," "reasonably necessary to the conduct of the litigation," and "reasonable in amount." Civ. Proc. Code §§ 1033.5(c)(1)-(3).

Expert fees are recoverable under Government Code section 12965(b) only for plaintiff's FEHA cause of action, and not for his Labor Code section 1102.5 cause of action. Thus defendant argues that the court should apportion the expert fees between the two causes of action. As noted above, the court finds that apportionment is not appropriate because plaintiff's two claims are inextricably intertwined. Indeed, that is even more true for the expert witness fees than the attorneys' fees, because there is no possibility of any expert witness expense attributable exclusively to plaintiff's Labor Code section 1102.5 claim, such as time spent on jury instructions or legal research

regarding the section 1102.5 claim. Moreover, two of the four experts, Leoni and Majcher, are medical experts whom plaintiff retained to testify about plaintiff's health, medical services rendered, and injuries, and the third expert, Karen Smith, is an economist whom plaintiff retained to give an opinion on plaintiff's claim for lost wages. See Motion, Exh. 4, 1:27-2:16, 2:24-27 & attached Smith Decl., ¶¶ 3-5. These expert fees cannot possibly be apportioned between plaintiff's section 1102.5 cause of action and his FEHA cause of action because all three witnesses testified about damages issues relevant to both.

The fourth expert Kim is a former police officer whom plaintiff retained to provide expert testimony about the investigation by the department that culminated in plaintiff's termination, the propriety of plaintiff's behavior during the "Portos 1" investigation, and the impropriety of the subsequent "Portos II" investigation which defendant offered as its nondiscriminatory reason for terminating plaintiff. Id., Exh. 4, 2:28-3:3 & attached Smith Decl., ¶¶ 8-9; see Reply, 3:27-4:6. Kim's testimony on the issue of defendant's proffered nondiscriminatory reason for terminating plaintiff was relevant to the FEHA cause of action under the third part of the three-part McDonnell Douglas test. See McDonnell Douglas Corp. v. Green, 411 U.S. 792, 807 (1973). It is true that section 1102.5 requires a causal link between the allegedly protected activity and the termination or other adverse employment action. See Patten v. Grant Joint Union High School Dist., 134 Cal. App. 4th 1378, 1384 (2005) (three-step McDonnell Douglas test applies to a section 1102.5(b) retaliation cause of action). Nevertheless, with or without his section 1102.5 retaliation cause of action (i.e., had plaintiff only alleged retaliation under the FEHA), plaintiff would still have had to retain Kim or another expert to testify about whether the department's proffered reason for plaintiff's termination was merely a pretext. Therefore, Kim's time also cannot be apportioned between the two causes of action.

Plaintiff, however, is only entitled to recover expert fees that are "reasonable." Gov't Code § 12965(b); Civ. Proc. Code §§ 1033.5(c)(1)-(3).

The largest component of the claimed \$29,615 in expert fees is \$14,470 paid to Ms. Smith, the economist. Smith billed \$7,320 on January 31, 2012 after her deposition for 24.4 hours at an hourly rate of \$300, and billed another 23.4 hours on March 14, 2012, also mostly at an hourly rate of \$300 (she billed 1.3 hours of her testimony time at an hourly rate of \$400), for another \$7,150. Defendant attacks the 47.8 hours claimed for Ms. Smith, arguing that Smith essentially made multiple errors in her report for her deposition and then corrected these errors prior to trial, and that defendants should only have to pay for one effort. The court agrees that Smith's time to correct her mistakes and insert the correct pay information for plaintiff just prior to trial should have been done before, and that the defendant need not pay for the time Smith charged to speculate at her deposition about plaintiff's compensation. Therefore, the court will deduct 2.1 hours from January 30, 2012, and 5.0 of the total 9.3 hours Smith billed to summarize check stubs and make calculations on January 31, 2012 and February 1, 2012. At \$300 per hour, this amounts to a reduction of \$2,130. Plaintiff may recover \$12,340 for the expert fees of Ms. Smith.

The expert fee of Paul Kim, in the amount of \$11,600, is the second largest component of fees plaintiff seeks to recover. According to the attached invoices, Kim charged \$8,960 for 22.4 hours rendered in February 2012, plus another \$2,640 for 6.6 hours in March 2012 for trial preparation and trial. The court finds that the March charges are reasonable. Of the 22.4 hours billed in February, however, Kim spent 16 hours reviewing this case, 3.4 hours on conference calls with plaintiff and his counsel, another 3 hours on another call with plaintiff's counsel, and to email his report. The court finds that 3 total hours on conference calls, including the time to email a report, is reasonable. And only 8 hours for case review. At Kim's hourly rate of \$400 per hour, plaintiff may recover \$4,400 for Kim's work in February 2012, plus the full amount billed in March (\$2,640), for a total of \$7,040 for the expert services of Paul Kim.

Plaintiff also seeks to recover \$3,000 for the services of Sean Leoni. See Smith Decl., ¶¶ 3, 8. Defendant objects that Smith's declaration is hearsay, and that plaintiff has not offered evidence that this claimed charge was incurred in the amount claimed. Opposition, 4:10-19. On reply, plaintiff argues that Leoni testified at trial, and billed \$3,000 for her services, referencing a bill attached to the reply as Exhibit A. See Reply, 5:19-6:8. Brizzolara submits a declaration along with the reply that includes a one-page fax stating: "THE FEE FOR DR. LEONI'S TRIAL TESTIMONY IS \$3,000." Brizzolara Decl., ¶ 2, Exh. A. This fax does not show how many hours Leoni worked, or what his hourly rate was, making it difficult for the court to determine what fee is reasonable for Leoni's services. Leoni did testify at trial, however, and the court finds the testimony was "reasonably necessary" to this litigation, and that plaintiff must have incurred some cost. The court finds that \$3,000 is reasonable and recoverable. Plaintiff may recover \$3,000 for the expert services of Sean Leoni.

The final component of expert fees is \$545 claimed for Stanley Majcher, one of plaintiff's treating physicians. As plaintiff argues on reply, the cost to depose Majcher as an expert should have been paid by defendant, because the types of questions defendant asked Majcher at the deposition were seeking expert testimony. Civ. Proc. Code § 2034.430(b); see Opposition, 4:21-26 & Exh. E. Instead, plaintiff paid Majcher's expert fee at his deposition. If defendant found Majcher's rate was unreasonable, defendant's remedy was to move for an order setting the compensation of that expert. Id., § 2034.470. Plaintiff designated Majcher as an expert, and defendant does not argue that the \$545 charge was not incurred. The court finds the \$545 is reasonable. plaintiff may recover \$545 for the expert services of Stanley Majcher.

III. Disposition

Plaintiff's motion to recover expert fees under Government Code section 12965(b) is granted in part. Plaintiff may recover \$22,925 in expert witness fees.

NOTICE

To be given by the clerk.

CITY ATTORNEY

2012 JUL 20 PM 3:51 RULINGS ON SUBMITTED MATTERS

JULY 16, 2012

TAYLOR v. CITY OF BURBANK, ET AL.
CASE NO. BC422252

CONFIRMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

JUL 16 2012

John A. Clarke, Executive Officer/Clerk
BY I. Flores

PLAINTIFF'S MOTION FOR ATTORNEYS' FEES

A. Entitlement to Attorneys' Fees

A prevailing FEHA plaintiff may recover his or her reasonable attorneys' fees. Plaintiff prevailed on his FEHA claim and is entitled to recover his reasonable attorneys' fees.

B. The Amount of Reasonable Attorneys' Fees

1. Calculation of the Lodestar

The court determines the amount of reasonable attorneys' fees under the FEHA pursuant to the lodestar method. Chavez v. City of Los Angeles, 47 Cal. 4th 970, 985 (2010); see PLCM Group, Inc. v. Drexler, 22 Cal. 4th 1084, 1095-96 (2000); Serrano v. Priest, 20 Cal. 3d 25, 48 (1977); Thayer v. Wells Fargo Bank, N.A., 92 Cal. App. 4th 819, 833 (2001); Meister v. Regents of the University of California, 67 Cal. App. 4th 437, 446-47 (1998). The lodestar method has "primacy" in California. Lealao v. Beneficial California, Inc., 82 Cal. App. 4th 19, 26 (2000). "In determining a reasonable fee award under fee shifting statutes, the trial court begins by calculating a lodestar figure based on the hours reasonably spent, multiplied by the prevailing hourly rate for private attorneys in the community conducting litigation of the same type." Rey v. Madera Unified School District, 203 Cal. App. 4th 1223, 1240 (2012). Under the lodestar method, the trial court has discretion to determine that time spent on issues and claims on which plaintiff does not prevail is time not "reasonably spent." Boquillon v. Beckwith, 49 Cal. App. 4th 1697, 1722-23 (1996). "There is no precise rule or formula for making these determinations. The trial court may attempt to identify specific hours that should be eliminated, or it may simply reduce the award to account for the limited success. The court necessarily has discretion in making this equitable judgment." Sokolow v. County of San Mateo, 213 Cal. App. 3d 231, 248 (1989) (citing Hensley v. Eckerhart, 461 U.S. 424, 436-37 (1983)). "Once the lodestar is fixed, the court may increase or decrease that amount by applying a positive or negative 'multiplier' to take other factors into account." Rey, 203 Cal. App. 4th at 1240; see PLCM Group, 22 Cal. 4th at 1095; Thayer, 92 Cal. App. 4th at 833.

2. Reasonable Hourly Rate

"To enable the trial court to determine whether attorney fees should be awarded and in what amount, an attorney should present . . . expert opinion, by [the applicant] and other lawyers, as to what would be a reasonable fee for such services." Martino v. Denevi, 182 Cal. App. 3d 553, 558 (1986). But such evidence is not required.

"Testimony or other direct evidence of the reasonable value of the services need not be introduced, the knowledge and experience of the trial judge being sufficient." Nazemi v. Tseng, 5 Cal. App. 4th 1633, 1642 (1992); see Donahue v. Donahue, 182 Cal. App. 4th 259, 276 (2010) ("judges themselves are deemed to be experts on the value of legal services, and may rely on their own experience about reasonable and proper fees, without resort to expert testimony").

Here, the hourly rates requested by counsel for plaintiff are \$600 for Gregory Smith, \$600 for Christopher Brizzolara, and \$525 for appellate counsel Douglas Benedon. The court finds that in light of these attorneys' backgrounds and experience, the hourly rate for Mr. Smith and Mr. Brizzolara is a little high. The court finds that \$550 is a reasonable hourly rate for Mr. Smith and Mr. Brizzolara. The \$525 hourly rate for Mr. Benedon is reasonable.

3. Hours Reasonably Expended

"Where fees are authorized by statute, the amount of the fee to be awarded is to be determined by the trial court in the reasonable exercise of its discretion. (Contractors Labor Pool, Inc. v. Westway Contractors, Inc. (1997) 53 Cal. App. 4th 152, 169.) . . .

The trial court, which possesses its own expertise on the value of legal services performed, makes its determination after consideration of a number of factors, including the nature of the litigation, its difficulty, the amount involved, the skill required in its handling, the skill employed, the attention given, the success or failure, and other circumstances in the case." Thompson Pacific Constr., Inc. v. City of Sunnyvale, 155 Cal. App. 4th 525, 557 (2007) (citation omitted).

The court has reviewed in detail the invoices submitted by counsel for plaintiff. See Declarations of Gregory Smith, Christopher Brizzolara, and Douglas Benedon. For Mr. Smith's time, the court will award the following:

DATE	HOURS
06/13/09	3.0
06/15/09	0.9
06/17/09	2.2
06/30/09	0.8

07/30/09	2.7
08/25/09	3.8
09/18/09	3.5
09/21/09	0.4
10/12/09	0.4
10/13/09	1.0
10/16/09	3.6
10/20/09	0.6
10/26/09	3.2
11/02/09	0.3 ¹
11/11/09	6.5
11/13/09	1.0
11/16/09	0.2
11/25/09	4.0
12/14/09	0.5
01/15/10	3.0
01/18/10	0.1
09/19/10	9.0
01/29/10	0.2
02/24/10	0.5
03/02/10	4.0 ²
03/05/10	0.5

¹ The answer is only six pages. It cannot have taken Mr. Smith an hour (!) to read it. It took Mr. Brizzolara only 0.1 hours to read the same answer. See Brizzolara Decl., Exh. A, at 1 (11/07/09 entry).

² The court notes that virtually every court hearing at which Mr. Smith appears required 4.0 hours of his time, regardless of the nature or actual length of the hearing.

03/11/10	0.2
03/31/10	1.0
04/05/10	1.3
04/14/10	4.0 ³
04/16/10	4.2
04/21/10	0.5
04/27/10	0.5 ⁴
04/28/10	0.5
05/04/10	0.5
05/07/10	7.0
06/04/10	0.5
07/06/10	4.5
07/07/10	5.0
07/12/10	7.5
08/11/10	4.0
08/13/10	3.5
08/30/10	3.0
08/31/10	0.1
09/03/10	0.5
09/21/10	0.3
09/22/10	4.0
10/10/10	0.3
10/20/10	2.5

³ The court cannot understand how Mr. Smith drafted both the motion and the reply to the same motion on the same day.

⁴ The court notes that almost every letter Mr. Smith wrote took 0.5 hours to draft, apparently regardless of the length of the letter.

10/21/10	1.7
11/02/10	2.2
11/04/10	4.0
11/05/10	6.0
11/06/10	4.0
12/05/10	3.0
12/20/10	0.2
12/23/10	0.2
01/10/11	3.5
01/13/11	0.2
01/14/11	0.2 ⁵
01/19/11	4.0
01/21/11	4.0
02/11/11	1.0
03/18/11	2.0
03/23/11	4.1
04/06/11	4.0
04/19/11	0.5
05/31/11	4.0
06/01/11	0.3
06/28/11	0.7
07/05/11	4.0
07/07/11	5.6
07/08/11	0.3

⁵ The answer to the first amended complaint is only six and a half pages, and is strikingly similar to the answer to the original complaint. It cannot have taken Mr. Smith two hours (!!) to read it.

08/08/11	0.5
08/19/11	4.0
08/26/11	2.8
09/01/11	3.5
09/09/11	0.5
09/15/11	4.1
09/16/11	3.8 ⁶
10/03/11	11.0
10/04/11	7.4
10/05/11	4.5
10/06/11	4.2
10/07/10	8.5
10/11/11	2.5
10/12/11	9.0
10/13/11	9.0
10/17/11	2.5
10/18/11	9.0
10/26/11	3.5
10/27/11	2.5
10/28/11	2.5
10/31/11	3.7
11/01/11	6.5
11/02/11	4.1
11/04/11	3.4
11/07/11	0.4

⁶ This letter took 0.8 hours of Mr. Smith's time, but was addressed to two recipients.

11/07/11	5.0
11/10/11	7.1
11/15/11	4.6
11/16/11	4.5
12/07/11	8.4
01/12/12	5.4
01/13/12	4.3
01/16/12	5.0
01/17/12	5.5
01/18/12	3.0
01/19/12	6.5
01/20/12	7.3
01/30/12	3.5
01/31/12	1.5
02/14/12	6.4
02/21/12	9.5
02/22/12	3.2
02/24/12	9.8
02/26/12	3.2
02/27/12	7.2
02/28/12	1.0
02/29/12	6.5
03/01/12	6.9
03/02/12	8.7
03/03/12	9.6
03/04/12	8.4
03/05/12	13.1

03/06/12	9.5
03/07/12	12.6
03/08/12	13.1
03/09/12	8.1
03/12/12	13.5
03/13/12	12.8
03/14/12	12.9
03/15/12	9.3
03/16/12	9.2
03/19/12	8.4
03/29/12	0.5
04/05/12	1.5
04/12/12	0.5
04/26/12	2.5
04/27/12	3.7
05/07/12	4.5
05/17/12	2.2
05/18/12	1.5
05/22/12	3.2
05/30/12	1.0
06/01/12	2.0
06/06/12	4.1
06/10/12	3.5
Total	589.6

At Mr. Smith's reasonable hourly rate of \$550, the total amount of Mr. Smith's reasonable attorneys' fees is **\$324,280**.

For Mr. Brizzolara's time, the court will award the following:

DATE	HOURS
10/12/09	0.5
10/14/09	1.2
11/12/09	1.5
02/14/10	1.5
03/01/10	7.5
03/02/10	10.1
03/03/10	8.6
03/04/10	8.6
03/25/10	1.1
04/05/10	0.9
04/21/10	0.4
04/26/10	0.6
06/02/10	0.4
06/09/10	5.6
06/21/10	1.3
07/12/10	3.8
07/13/10	6.9
07/14/10	3.3
07/24/10	0.8
07/28/10	3.6
08/10/10	1.8
08/21/10	4.4
08/22/10	8.8
08/23/10	6.3
08/24/10	6.1

08/25/10	1.1
08/27/10	2.9
08/29/10	1.7
09/02/10	0.8
09/07/10	1.1
10/03/10	6.1
10/14/10	2.6
10/25/10	4.6
10/29/10	4.1
11/11/10	0.3
12/03/10	1.5
12/06/10	4.3
12/13/10	3.4
12/15/10	3.4
12/21/10	0.4
01/09/11	2.1
01/11/11	0.3
02/19/11	1.2
05/06/11	2.0
05/23/11	2.4
06/09/11	0.3
06/24/11	6.4
06/26/11	3.2
06/29/11	3.1
07/07/11	1.3
08/04/11	1.3
08/17/11	0.8

08/26/11	1.3
10/04/11	1.6
10/05/11	0.3
10/07/11	0.2
10/10/11	5.2
10/11/11	4.8
10/12/11	4.6
10/13/11	4.4
10/17/11	3.4
10/19/11	0.5
10/20/11	5.6
10/21/11	12.5
10/22/11	0.5
10/26/11	1.1
11/09/11	0.4
11/10/11	0.6
11/16/11	1.1
12/07/11	2.1
12/10/11	3.2
12/20/11	3.2
12/21/11	5.5
01/04/12	1.5
01/09/12	3.5
02/10/12	1.3
02/13/12	10.0
02/14/12	10.9
02/15/12	2.2

02/21/12	3.3
02/28/12	9.1
03/03/12	5.2
03/04/12	10.3
03/05/12	8.3
03/06/12	8.3
03/07/12	8.2
03/08/12	11.5
03/09/12	8.1
03/10/12	2.3
03/11/12	3.6
03/12/12	10.8
03/13/12	11.0
03/14/12	14.6
03/15/12	8.2
03/21/12	0.1
04/05/12	0.3
04/17/12	0.1
05/04/12	0.1
05/12/12	7.4
05/13/12	3.4 ⁷
05/15/12	9.9
05/16/12	9.5
05/22/12	3.9
06/06/12	5.6

⁷ There appear to be missing time entries for this day on Mr. Brizzolara's time sheets.

06/10/12	2.4
Total	415.3

At Mr. Brizzolara's reasonable hourly rate of \$550, the total amount of Mr. Brizzolara's reasonable attorneys' fees is **\$228,415**.

Much of the time requested for Selma Francia appears to be for secretarial work, not paralegal work. Ms. Francia spent much of her time in this case taking dictation, proofreading letters from Mr. Smith, serving documents by mail, giving instructions to attorney service companies, and formatting and mailing letters. These are not the kind of tasks that are reasonably recoverable as attorneys' or paralegal fees from the other side. In fact, the court is surprised that plaintiff seeks to recover fees for much of Ms. Francia's time. A reasonable hourly rate for Ms. Francia is \$100.

For Ms. Francia's time, the court will award the following:

DATE	HOURS
11/02/09	0.8
11/13/09	2.0
11/16/09	0.4
12/14/09	1.2
12/17/09	0.2
12/18/09	0.6
01/13/10	0.2
01/28/10	0.2
02/16/10	0.3
02/24/10	1.0
03/09/10	0.2
03/10/10	0.2
04/02/10	0.2
04/07/10	0.5

The total reasonable attorneys' fees under the lodestar is **\$620,265**.

4. Apportionment

Both of plaintiff's causes of action arose out of the same set of facts. The time spent by counsel for plaintiff pursuing the first cause of action for retaliation under Labor Code section 1102.5 and second causes of action for retaliation in violation of the FEHA is "inextricably intertwined." See Cruz v. Ayromloo, 155 Cal. App. 4th 1270, 1277 (2007); Erickson v. R.E.M. Concepts, Inc., 126 Cal. App. 4th 1073, 1083 (2005). "Attorney's fees need not be apportioned when incurred for representation on an issue common to both a cause of action in which fees are proper and one in which they are not allowed." Sumner Hill Homeowners' Ass'n v. Rio Mesa Holdings, LLC, 205 Cal. App. 4th 999, 1035-26 (2012). Nor need attorneys' fees be apportioned "between distinct causes of action where plaintiff's various claims involve a common core of facts or are based on related legal theories." Sumner Hill, 205 Cal. App. 4th at 1036; see Bell v. Vista Unified School Dist., 82 Cal. App. 4th 672, 687 (2000) ("Apportionment is not required when the claims for relief are so intertwined that it would be impracticable, if not impossible, to separate the attorney's time into compensable and noncompensable units"); Akins v. Enterprise Rent-A-Car, 79 Cal. App. 4th 1127, 1133 (2000) ("The joinder of causes of action should not dilute the right to attorneys' fees. Such fees need not be apportioned when incurred for representation of an issue common to both a cause of action for which fees are permitted and one for which they are not When liability issues are so interrelated that it would have been impossible to separate them into claims for which attorney fees are properly awarded and claims for which they are not, then allocation is not required."); Abdallah v. United Savings Bank, 43 Cal. App. 4th 1101, 1111 (1996) (where the plaintiff's claims are "inextricably intertwined," making it "impracticable, if not impossible to separate the multitude of conjoined activities into compensable or noncompensable time units," apportionment is not required); Drouin v. Fleetwood Enterprises, 163 Cal. App. 3d 486, 493 (1985) ("Attorneys fees need not be apportioned between distinct causes of action where plaintiff's various claims involve a common core of facts or are based on related legal theories.").

There is not much of a difference between plaintiff's two causes of action. Plaintiff's section 1102.5 cause of action was based on the allegation that defendants retaliated against him by demoting and denying him promotions because he (1) advised the Chief of Police to suspend an employee pending an investigation into allegations that the employee had sexually harassed women at the Burbank Animal Shelter; (2) complained that a captain was singling out and recommending termination of African-American and Hispanic probationary officers because of their race; and (3) recommended to the Chief of Police that the department retain an outside agency to investigate the theft of evidence relating to an internal affairs investigation, which could only have been perpetrated by an employee of the department. See First Amended Complaint, ¶¶ 14, 17, 19. Plaintiff based his retaliation cause of action under the FEHA on two of the three complaints on which the section 1102.5 cause of action is based, adding that he was fired after he filed a claim for unlawful retaliation under the FEHA.

Id., ¶ 25.

Moreover, with the exception of drafting a few jury instructions for the Labor Code section 1102.5 claim, and perhaps a little accompanying legal research, it is difficult to conceive of how plaintiff could have spent any significant time in connection with the first cause of action did not also involve the second cause of action. The court does not believe that much of a reduction for apportionment is appropriate in this case.

Counsel for plaintiff represent, somewhat self-contradictorily, that they "have specifically attempted not to submit billing for the time spent, if any, solely related to the Labor Code Section 1102.5 claim." Reply, 9:7-8. Nevertheless, to account for the occasional jury instruction and legal research that may have been limited to section 1102.5, plaintiff proposes a 2% apportionment to account for any "pure section 1102.5 time" that may have slipped through. Although this percentage probably overstates the amount of time that can fairly be attributed exclusively to the section 1102.5 cause of action, the court will apply it as a conservative estimate. This reduces the total reasonable attorneys' fees under the lodestar to **\$607,859.70**.

C. Multiplier

"There is no hard-and-fast rule limiting the factors that may justify an exercise of judicial discretion to increase or decrease a lodestar calculation." Thayer, 92 Cal. App. 4th at 834. Among the relevant factors that the trial court may consider are (1) the novelty and difficulty of the questions involved; (2) the skill displayed in presenting them; (3) the extent to which the nature of the litigation precluded other employment by the attorneys; (4) the contingent nature of the fee award, both from the point of view of eventual victory on the merits and the point of view of establishing eligibility for an award; and (5) where applicable, the fact that an award against a governmental entity would ultimately fall on taxpayers. Rey, 203 Cal. App. 4th at 1240; Thayer, 92 Cal. App. 4th at 834.

Considering these factors, the court finds that they weigh in favor of applying a multiplier of greater than one. The questions involved were moderately difficult, although not as complex as plaintiff maintains or as counsel for plaintiff made it seem at trial. Trial counsel for both sides displayed considerable skill in presenting the issues. Counsel for plaintiff showed skill in presenting the case, although counsel probably made the case much more complex than it needed to be. And there was considerable risk in the contingent nature of the case. But the fee award will be against a governmental entity. For these reasons, the court will a multiplier of 1.35. The court finds that this multiplier will adequately compensate counsel for plaintiff for the risk and complexity of taking on and prosecuting this action. Although this litigation lasted many years and included several interlocutory trips to the Court of Appeal, it appears to the court, from a review of the file and observation of the trial, that counsel for plaintiff are responsible for some of extended length and unnecessary complication in this litigation, and that the requested multiplier of 2.0 is excessive.

Applying this multiplier to the lodestar amount of reasonable attorneys' fees of **\$607,859.70**, the total award of reasonable attorneys' fees is **\$820,610.60**.

D. Disposition

For these reasons, the court will award plaintiff his reasonable attorneys' fees in the amount of **\$820,610.60**.

PLAINTIFF'S MOTION FOR EXPERT WITNESS FEES

I. Introduction

Because plaintiff obtained a net monetary recovery, he is the prevailing party and is entitled to recover his costs as a matter of right. See Civ. Proc. Code § 1032(b). Plaintiff has already recovered his ordinary statutory costs.

Under the FEHA, the court has discretion to award to a prevailing party on a FEHA cause of action, his or her "reasonable attorney's fees and costs, including expert witness fees." Gov't Code § 12965(b); see Baker v. Mulholland Sec. and Patrol, Inc., 204 Cal. App. 4th 776, 782 (2012) ("FEHA permits recovery of expert witness fees, within a court's discretion"); Anthony v. City of Los Angeles, 166 Cal. App. 4th 1011, 1017 (2008) ("FEHA now expressly authorizes the award of expert fees"). Plaintiff seeks to recover \$29,615 in expert fees.

II. Discussion

Expert fees that are recoverable by statute but require the court to exercise its discretion are recoverable by noticed motion, in the same manner by which attorneys' fees may be recovered. Anthony, 166 Cal. App. 4th at 1016. The court may award to the prevailing party its "reasonable attorneys fees and costs, including expert witness fees" Gov't Code § 12965(b); see Civ. Proc. Code § 1033.5(b)(1) ("Fees of experts not ordered by the court" are "not allowable as costs, except when expressly authorized by law"). Thus, as with all allowable costs, the prevailing party may only recover those costs that are "incurred," "reasonably necessary to the conduct of the litigation," and "reasonable in amount." Civ. Proc. Code §§ 1033.5(c)(1)-(3).

Expert fees are recoverable under Government Code section 12965(b) only for plaintiff's FEHA cause of action, and not for his Labor Code section 1102.5 cause of action. Thus defendant argues that the court should apportion the expert fees between the two causes of action. As noted above, the court finds that apportionment is not appropriate because plaintiff's two claims are inextricably intertwined. Indeed, that is even more true for the expert witness fees than the attorneys' fees, because there is no possibility of any expert witness expense attributable exclusively to plaintiff's Labor Code section 1102.5 claim, such as time spent on jury instructions or legal research

regarding the section 1102.5 claim. Moreover, two of the four experts, Leoni and Majcher, are medical experts whom plaintiff retained to testify about plaintiff's health, medical services rendered, and injuries, and the third expert, Karen Smith, is an economist whom plaintiff retained to give an opinion on plaintiff's claim for lost wages. See Motion, Exh. 4, 1:27-2:16, 2:24-27 & attached Smith Decl., ¶¶ 3-5. These expert fees cannot possibly be apportioned between plaintiff's section 1102.5 cause of action and his FEHA cause of action because all three witnesses testified about damages issues relevant to both.

The fourth expert Kim is a former police officer whom plaintiff retained to provide expert testimony about the investigation by the department that culminated in plaintiff's termination, the propriety of plaintiff's behavior during the "Portos I" investigation, and the impropriety of the subsequent "Portos II" investigation which defendant offered as its nondiscriminatory reason for terminating plaintiff. Id., Exh. 4, 2:28-3:3 & attached Smith Decl., ¶¶ 8-9; see Reply, 3:27-4:6. Kim's testimony on the issue of defendant's proffered nondiscriminatory reason for terminating plaintiff was relevant to the FEHA cause of action under the third part of the three-part McDonnell Douglas test. See McDonnell Douglas Corp. v. Green, 411 U.S. 792, 807 (1973). It is true that section 1102.5 requires a causal link between the allegedly protected activity and the termination or other adverse employment action. See Patten v. Grant Joint Union High School Dist., 134 Cal. App. 4th 1378, 1384 (2005) (three-step McDonnell Douglas test applies to a section 1102.5(b) retaliation cause of action). Nevertheless, with or without his section 1102.5 retaliation cause of action (i.e., had plaintiff only alleged retaliation under the FEHA), plaintiff would still have had to retain Kim or another expert to testify about whether the department's proffered reason for plaintiff's termination was merely a pretext. Therefore, Kim's time also cannot be apportioned between the two causes of action.

Plaintiff, however, is only entitled to recover expert fees that are "reasonable." Gov't Code § 12965(b); Civ. Proc. Code §§ 1033.5(c)(1)-(3).

The largest component of the claimed \$29,615 in expert fees is \$14,470 paid to Ms. Smith, the economist. Smith billed \$7,320 on January 31, 2012 after her deposition for 24.4 hours at an hourly rate of \$300, and billed another 23.4 hours on March 14, 2012, also mostly at an hourly rate of \$300 (she billed 1.3 hours of her testimony time at an hourly rate of \$400), for another \$7,150. Defendant attacks the 47.8 hours claimed for Ms. Smith, arguing that Smith essentially made multiple errors in her report for her deposition and then corrected these errors prior to trial, and that defendants should only have to pay for one effort. The court agrees that Smith's time to correct her mistakes and insert the correct pay information for plaintiff just prior to trial should have been done before, and that the defendant need not pay for the time Smith charged to speculate at her deposition about plaintiff's compensation. Therefore, the court will deduct 2.1 hours from January 30, 2012, and 5.0 of the total 9.3 hours Smith billed to summarize check stubs and make calculations on January 31, 2012 and February 1, 2012. At \$300 per hour, this amounts to a reduction of \$2,130. Plaintiff may recover \$12,340 for the expert fees of Ms. Smith.

The expert fee of Paul Kim, in the amount of \$11,600, is the second largest component of fees plaintiff seeks to recover. According to the attached invoices, Kim charged \$8,960 for 22.4 hours rendered in February 2012, plus another \$2,640 for 6.6 hours in March 2012 for trial preparation and trial. The court finds that the March charges are reasonable. Of the 22.4 hours billed in February, however, Kim spent 16 hours reviewing this case, 3.4 hours on conference calls with plaintiff and his counsel, another 3 hours on another call with plaintiff's counsel, and to email his report. The court finds that 3 total hours on conference calls, including the time to email a report, is reasonable. And only 8 hours for case review. At Kim's hourly rate of \$400 per hour, plaintiff may recover \$4,400 for Kim's work in February 2012, plus the full amount billed in March (\$2,640), for a total of \$7,040 for the expert services of Paul Kim.

Plaintiff also seeks to recover \$3,000 for the services of Sean Leoni. See Smith Decl., ¶¶ 3, 8. Defendant objects that Smith's declaration is hearsay, and that plaintiff has not offered evidence that this claimed charge was incurred in the amount claimed. Opposition, 4:10-19. On reply, plaintiff argues that Leoni testified at trial, and billed \$3,000 for her services, referencing a bill attached to the reply as Exhibit A. See Reply, 5:19-6:8. Brizzolara submits a declaration along with the reply that includes a one-page fax stating: "THE FEE FOR DR. LEONI'S TRIAL TESTIMONY IS \$3,000." Brizzolara Decl., ¶ 2, Exh. A. This fax does not show how many hours Leoni worked, or what his hourly rate was, making it difficult for the court to determine what fee is reasonable for Leoni's services. Leoni did testify at trial, however, and the court finds the testimony was "reasonably necessary" to this litigation, and that plaintiff must have incurred some cost. The court finds that \$3,000 is reasonable and recoverable. Plaintiff may recover \$3,000 for the expert services of Sean Leoni.

The final component of expert fees is \$545 claimed for Stanley Majcher, one of plaintiff's treating physicians. As plaintiff argues on reply, the cost to depose Majcher as an expert should have been paid by defendant, because the types of questions defendant asked Majcher at the deposition were seeking expert testimony. Civ. Proc. Code § 2034.430(b); see Opposition, 4:21-26 & Exh. E. Instead, plaintiff paid Majcher's expert fee at his deposition. If defendant found Majcher's rate was unreasonable, defendant's remedy was to move for an order setting the compensation of that expert. Id., § 2034.470. Plaintiff designated Majcher as an expert, and defendant does not argue that the \$545 charge was not incurred. The court finds the \$545 is reasonable. plaintiff may recover \$545 for the expert services of Stanley Majcher.

III. Disposition

Plaintiff's motion to recover expert fees under Government Code section 12965(b) is granted in part. Plaintiff may recover \$22,925 in expert witness fees.

NOTICE

To be given by the clerk.

CITY ATTORNEY
2012 JUL 20 PM 3:38

FILED
LOS ANGELES

APR 12 2012

JOHN A. CLARKE, CLERK
BY INGRID FLORES, DEPUTY

RECEIVED
MAR 21 2012
DEPT. 50

UNLIMITED JURISDICTION
SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

WILLIAM TAYLOR,

Plaintiff,

vs.

CITY OF BURBANK and DOES 1 through
100, inclusive,

Defendants.

CASE NO. BC 422 252

[Assigned to the Hon. John L. Segal,
Judge, Dept. "50"]

JUDGMENT ON
GENERAL VERDICT

Action Filed:
Trial:

September 22, 2009
March 5, 2012

This action came on regularly for trial on March 5, 2012, in Department "50" of the Los Angeles County Superior Court, the Honorable John L. Segal, Judge presiding. Plaintiff William Taylor was personally present and appeared through his attorneys, Gregory W. Smith and Christopher Brizzolara. Defendant City of Burbank appeared through its attorneys, Ronald F. Frank of Burke Williams & Sorenson LLP and Linda Miller Savitt of Ballard, Rosenberg, Golper & Savitt.

A jury of twelve persons and two alternates was regularly impaneled and sworn. Witnesses were sworn and testified, and exhibits were identified and received into

1 evidence.

2 After hearing the evidence and arguments of counsel, the jury was duly instructed
3 by the court and the case was submitted to the jury with directions to return verdict on the
4 general verdict which was submitted to the jury. The jury deliberated and thereafter
5 returned into court on March 19, 2012 with its verdict, which said verdict was in words and
6 figures as follows, to wit:
7

8 We, the jury in the above entitled action, find the following general verdict:

9 "Select one of the following two options:

10
11 X We find in favor of William Taylor and against City of Burbank and award
12 damages to William Taylor in the following amounts:

13 economic damages amount of \$1,048,579.00

14 non-economic damages amount of \$250,000.00

15
16 _____ We find in favor of City of Burbank and against William Taylor.

17
18 Signed: Laura Groen
19 Presiding Juror

20 Dated: 3/19/2012

21
22 After this verdict form has been signed, notify the court attendant that you are
23 ready to present your verdict in the courtroom."
24
25
26
27
28

1 It appearing by reason of said general verdict that Plaintiff William Taylor is entitled
2 to judgment against Defendant City of Burbank.

3 **NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED** that Plaintiff
4 William Taylor have judgment in his favor and recover from Defendant City of Burbank in
5 the amount of \$1,298,579.00 with interest thereon at the rate of seven (7%) percent per
6 annum from the date of the verdict until paid.

7
8 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Plaintiff William
9 Taylor be granted the following injunctive relief pursuant to California Government Code §
10 12940:
11
12
13
14
15

16 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Plaintiff William
17 Taylor is awarded costs in the amount of: \$ 8,939.49 (IF) and attorneys'
18 fees in the amount of \$ 820,610.60 (IF), and expert witness fees in the
19 amount of \$ 22,925.00. (IF)

20 Dated: April 12, 2012

21 
The Honorable John L. Segal
22 Judge of the Superior Court
23
24
25
26
27
28

PROOF OF SERVICE

STATE OF CALIFORNIA)

COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years of age, and am not a party to the within action; my business address is 9100 Wilshire Boulevard, Suite 345E, Beverly Hills, California 90212.

On the date hereinbelow specified, I served the foregoing document, described as set forth below on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes, at Beverly Hills, addressed as follows:

DATE OF SERVICE : March 21, 2012

DOCUMENT SERVED : **(PROPOSED) JUDGMENT ON GENERAL VERDICT**

PARTIES SERVED : **SEE ATTACHED SERVICE LIST.**

XXX (BY REGULAR MAIL) I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States mail at Beverly Hills, California. I am "readily familiar" with firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

XXX (BY ELECTRONIC MAIL) I caused such document to be electronically mailed to **Christopher Brizzolara, Esq.** at the following e-mail address: samorai@adelphia.net.

XXX (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

— (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

EXECUTED at Beverly Hills, California on March 21, 2012.


Selma J. Francia

SERVICE LIST

WILLIAM TAYLOR v. CITY OF BURBANK
LOS ANGELES COUNTY SUPERIOR COURT CASE NO. BC 422 252

Christopher Brizzolara, Esq.
1528 16th Street
Santa Monica, California 90404
(By Electronic Mail Only)

Ronald F. Frank, Esq.
Robert J. Tyson, Esq.
Burke Williams & Sorenson LLP
444 South Flower Street, Suite 2400
Los Angeles, California 90071-2953

Amelia Ann Albano, City Attorney
Carol A. Humiston, Sr. Asst. City Atty.
Office of the City Attorney
City of Burbank
275 East Olive Avenue
Post Office Box 6459
Burbank, California 91510

Linda Miller Savitt, Esq.
Philip L. Reznik, Esq.
Ballard Rosenberg Golper & Savitt LLP
500 North Brand Boulevard, 20th Floor
Glendale, California 91203-9946

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 07/16/12

DEPT. 50

HONORABLE JOHN L. SEGAL

JUDGE

I. FLORES

DEPUTY CLERK

HONORABLE
7

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

E. AVENA, C/A

Deputy Sheriff

A. GONZALEZ, CSR #11612
Court Pro Tempore

Reporter

8:31 am

BC422252

Plaintiff CHRIS BRIZZOLARA (X)
Counsel DOUGLAS G. BENEDON (X)

WILLIAM TAYLOR (X)
VS
CITY OF BURBANK

Defendant LINDA MILLER SAVITT (X)
Counsel RONALD F. FRANK (X)
ROBERT J. TYSON (X)

RECUSAL-GREEN
170.6-ROLF M. TREU

NATURE OF PROCEEDINGS:

MOTION OF PLAINTIFF WILLIAM TAYLOR FOR ATTORNEY'S FEES;

MOTION OF THE ABOVE NAMED PLAINTIFF FOR EXPERT WITNESS COSTS;

Motions as captioned above, are called for hearing and held.

The Stipulation and Order to Use Certified Shorthand Reporter having been signed by the Court and filed this date, the case proceeds with the reporter of record as reflected on the minute order.

The court issues a written tentative ruling in this matter. The court hears from counsel re Motion for Attorneys' Fees.

The matter is placed on second call, to hear from counsel re Motion for Expert Witness Fees.

LATER, AND OFF THE RECORD:

The matter is recalled. For this proceeding only the following attorneys are present:

For plaintiffs: Chris Brizzolara (X)
For defendants: Ronald F. Frank (X) and Robert J. Tyson (X)

CITY ATTORNEY
2012 JUL 20 PM 3:38

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 07/16/12

DEPT. 50

HONORABLE JOHN L. SEGAL

JUDGE

I. FLORES

DEPUTY CLERK

HONORABLE
7

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

E. AVENA, C/A

Deputy Sheriff

A. GONZALEZ, CSR #11612
Court Pro Tempore

Reporter

8:31 am

BC422252

Plaintiff

CHRIS BRIZZOLARA (X)

Counsel

DOUGLAS G. BENEDON (X)

WILLIAM TAYLOR (X)

VS

Defendant

LINDA MILLER SAVITT (X)

CITY OF BURBANK

Counsel

RONALD F. FRANK (X)

ROBERT J. TYSON (X)

RECUSAL-GREEN

170.6-ROLF M. TREU

NATURE OF PROCEEDINGS:

The court hears from counsel re: Motion for Expert Witness Fees.

After hearing from counsel, the Court takes the above captioned motions, under submission.

Notice is waived.

LATER, OFF THE RECORD AND OUTSIDE THE PRESENCE OF ALL COUNSEL:

The Court rules on above captioned submitted motions as follows:

For all of the reasons stated in the Court's Rulings on Submitted Matters filed this date under separate cover, the Court rules as follows:

PLAINTIFF'S MOTION FOR ATTORNEYS' FEES:

For these reasons, the court will award plaintiff his reasonable attorneys' fees in the amount of \$820,610.60.

PLAINTIFF'S MOTION FOR EXPERT WITNESS FEES:

Plaintiff's motion to recover expert fees under Government Code Section 12965(b) is GRANTED in part. Plaintiff may recover \$22,925 in expert witness fees.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 07/16/12

DEPT. 50

HONORABLE JOHN L. SEGAL

JUDGE

I. FLORES

DEPUTY CLERK

HONORABLE
7

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

E. AVENA, C/A

Deputy Sheriff

A. GONZALEZ, CSR #11612
Court Pro Tempore

Reporter

8:31 am

BC422252

Plaintiff

CHRIS BRIZZOLARA (X)

Counsel

DOUGLAS G. BENEDON (X)

WILLIAM TAYLOR (X)

VS

Defendant

LINDA MILLER SAVITT (X)

CITY OF BURBANK

Counsel

RONALD F. FRANK (X)

ROBERT J. TYSON (X)

RECUSAL-GREEN

170.6-ROLF M. TREU

NATURE OF PROCEEDINGS:

Accordingly, the amount of costs, attorneys' fees and expert witness fees are entered into the Judgment on General Verdict filed on April 12, 2012.

The clerk is directed to give notice. A conformed copy of the court's Rulings on Submitted Matters and copy of the Judgment on General Verdict filed on April 12, 2012, are sent along with a copy of this minute order.

CLERK'S CERTIFICATE OF MAILING

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the minute order dated: 7/16/12; conformed copy of court's Rulings on Submitted Matters and a copy of Judgment on General Verdict filed on April 12, 2012, upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Los Angeles, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Dated: 7/17/12

John A. Clarke, Executive Officer/Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 07/16/12

DEPT. 50

HONORABLE JOHN L. SEGAL

JUDGE

I. FLORES

DEPUTY CLERK

HONORABLE
7

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

E. AVENA, C/A

Deputy Sheriff

A. GONZALEZ, CSR #11612
Court Pro Tempore

Reporter

8:31 am BC422252

WILLIAM TAYLOR (X)

VS

CITY OF BURBANK

RECUSAL-GREEN

170.6-ROLF M. TREU

Plaintiff

CHRIS BRIZZOLARA (X)

Counsel

DOUGLAS G. BENEDON (X)

Defendant

LINDA MILLER SAVITT (X)

Counsel

RONALD F. FRANK (X)

ROBERT J. TYSON (X)

NATURE OF PROCEEDINGS:

By: 

I. Flores, Deputy Clerk

GREGORY W. SMITH
LAW OFFICES OF GREGORY W. SMITH
9100 Wilshire Boulevard, Suite 345E
Beverly Hills, CA 90212

CHRISTOPHER BRIZZOLARA
1528 16th Street
Santa Monica, CA 90404

LINDA MILLER SAVITT
BALLARD ROSENBERG GOLPER & SAVITT, LLP
500 North Brand Boulevard, 20th Floor
Glendale, CA 91203

RONALD F. FRANK
ROBERT J. TYSON
BURKE, WILLIAMS & SORENSEN, LLP
444 S. Flower Street, 24th Floor
Los Angeles, CA 90071

CAROL A. HUMISTON

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 07/16/12

DEPT. 50

HONORABLE JOHN L. SEGAL

JUDGE

I. FLORES

DEPUTY CLERK

HONORABLE
7

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

E. AVENA, C/A

Deputy Sheriff

A. GONZALEZ, CSR #11612
Court Pro Tempore

Reporter

8:31 am BC422252

WILLIAM TAYLOR (X)
VS
CITY OF BURBANK

RECUSAL-GREEN
170.6-ROLF M. TREU

Plaintiff CHRIS BRIZZOLARA (X)
Counsel DOUGLAS G. BENEDON (X)

Defendant LINDA MILLER SAVITT (X)
Counsel RONALD F. FRANK (X)
ROBERT J. TYSON (X)

NATURE OF PROCEEDINGS:

CITY OF BURBANK
275 East Olive Avenue
P.O. Box, 6459
Burbank, CA 91510

CITY ATTORNEY

2012 JUL 20 PM 3:38

FILED
LOS ANGELES

APR 12 2012

JOHN A. CLARKE, CLERK
BY INGRID FLORES, DEPUTY

RECEIVED

MAR 21 2012

DEPT. 50

UNLIMITED JURISDICTION

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

WILLIAM TAYLOR,

Plaintiff,

vs.

CITY OF BURBANK and DOES 1 through
100, inclusive,

Defendants.

CASE NO. BC 422 252

[Assigned to the Hon. John L. Segal,
Judge, Dept. "50"]

JUDGMENT ON
GENERAL VERDICT

Action Filed: September 22, 2009
Trial: March 5, 2012

This action came on regularly for trial on March 5, 2012, in Department "50" of the Los Angeles County Superior Court, the Honorable John L. Segal, Judge presiding. Plaintiff William Taylor was personally present and appeared through his attorneys, Gregory W. Smith and Christopher Brizzolara. Defendant City of Burbank appeared through its attorneys, Ronald F. Frank of Burke Williams & Sorenson LLP and Linda Miller Savitt of Ballard, Rosenberg, Golper & Savitt.

A jury of twelve persons and two alternates was regularly impaneled and sworn. Witnesses were sworn and testified, and exhibits were identified and received into

4/12

1 evidence.

2 After hearing the evidence and arguments of counsel, the jury was duly instructed
3 by the court and the case was submitted to the jury with directions to return verdict on the
4 general verdict which was submitted to the jury. The jury deliberated and thereafter
5 returned into court on March 19, 2012 with its verdict, which said verdict was in words and
6 figures as follows, to wit:
7

8 We, the jury in the above entitled action, find the following general verdict:

9 "Select one of the following two options:

10
11 X We find in favor of William Taylor and against City of Burbank and award
12 damages to William Taylor in the following amounts:

13 economic damages amount of \$1,048,579.00

14 non-economic damages amount of \$250,000.00

15
16 We find in favor of City of Burbank and against William Taylor.

17
18 Signed: Laura Groen
19 Presiding Juror

20 Dated: 3/19/2012

21
22 After this verdict form has been signed, notify the court attendant that you are
23 ready to present your verdict in the courtroom."
24
25
26
27
28

1 It appearing by reason of said general verdict that Plaintiff William Taylor is entitled
2 to judgment against Defendant City of Burbank.

3 **NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED** that Plaintiff
4 William Taylor have judgment in his favor and recover from Defendant City of Burbank in
5 the amount of \$1,298,579.00 with interest thereon at the rate of seven (7%) percent per
6 annum from the date of the verdict until paid.

7
8 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Plaintiff William
9 Taylor be granted the following injunctive relief pursuant to California Government Code §
10 12940:
11
12
13
14
15

16 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Plaintiff William
17 Taylor is awarded costs in the amount of: \$ 8,939.49 (IF) and attorneys'
18 fees in the amount of \$ 820,610.60 (IF), and expert witness fees in the
19 amount of \$ 22,925.00. (IF)

20 Dated: April 12, 2012

21 
22 The Honorable John L. Segal
23 Judge of the Superior Court
24
25
26
27
28

PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years of age, and am not a party to the within action; my business address is 9100 Wilshire Boulevard, Suite 345E, Beverly Hills, California 90212.

On the date hereinbelow specified, I served the foregoing document, described as set forth below on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes, at Beverly Hills, addressed as follows:

DATE OF SERVICE : March 21, 2012

DOCUMENT SERVED : **(PROPOSED) JUDGMENT ON GENERAL VERDICT**

PARTIES SERVED : **SEE ATTACHED SERVICE LIST.**

XXX (BY REGULAR MAIL) I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States mail at Beverly Hills, California. I am "readily familiar" with firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

XXX (BY ELECTRONIC MAIL) I caused such document to be electronically mailed to **Christopher Brizzolara, Esq.** at the following e-mail address: samorai@adelphia.net.

XXX (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

— (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

EXECUTED at Beverly Hills, California on March 21, 2012.


Selma L. Francia

SERVICE LIST

**WILLIAM TAYLOR v. CITY OF BURBANK
LOS ANGELES COUNTY SUPERIOR COURT CASE NO. BC 422 252**

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